

9 FAM 41.2 NOTES

(CT:VISA-1603; 11-15-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 41.2 N1 WAIVER FOR ALIENS RESIDING IN CANADA OR BERMUDA

9 FAM 41.2 N1.1 Common Nationality Includes Commonwealth Countries and Ireland

(TL:VISA-164; 04-25-1997)

The waiver of passport and visa requirements provided by 22 CFR 41.2(b) for permanent residents of Canada or Bermuda who have a common nationality with Canadians or with British subjects in Bermuda, is considered to include citizens of all Commonwealth countries, as well as citizens of Ireland. (See 9 FAM 41.2 Exhibit I.)

9 FAM 41.2 N1.2 Stateless Alien Resident of Canada or Bermuda not Entitled to Waiver

(TL:VISA-367; 03-11-2002)

Permanent residents of Canada or Bermuda who are nationals of one of the Commonwealth countries listed in 9 FAM 41.2 Exhibit I may be granted a waiver of visa and passport requirements. An alien resident of Canada or Bermuda who is the bearer of a certificate of identity or other stateless person's document issued by the government of one of these countries may not benefit from the waiver.

9 FAM 41.2 N2 WAIVER FOR BRITISH SUBJECTS ATTACHED TO CANADIAN AND BRITISH GOVERNMENT ORGANIZATIONS IN CANADA

(TL:VISA-164; 04-25-1997)

British subjects and their families attached to Canadian or British

Government organizations in Canada, including the military, though not "permanent residents," may be regarded as nationals of Canada and eligible for the waiver provided under 22 CFR 41.2(a).

9 FAM 41.2 N3 CONDITIONS FOR ADMISSION OF ALIENS UNDER DIRECT-TRANSIT WAIVER

(CT:VISA-1046; 09-30-2008)

NOTE: The Transit Without Visa (TWOV) Program has been suspended until further notice.

9 FAM 41.2 N4 SIGNATORY TRANSPORTATION LINES

(CT:VISA-855; 11-22-2006)

See 9 FAM 41.2 Exhibit III for a list of carriers which have contracts, including bonding agreements, with the Attorney General pursuant to INA 233(c) (8 U.S.C. 1223(c)) regarding aliens who are being transported in immediate and continuous transit through the United States. (See also 9 FAM 41.2 Exhibit II for aliens of countries excepted from these contracts.)

9 FAM 41.2 N5 NATIVES AND RESIDENTS OF THE FREELY ASSOCIATED STATES NOT PROCEEDING IN DIRECT TRANSIT TO THE UNITED STATES

(CT:VISA-855; 11-22-2006)

A native and resident of the Freely Associated States (formerly the Trust Territory of the Pacific Islands), traveling to the United States, but not in direct and continuous transit, may be issued a nonimmigrant visa (NIV) without being charged the reciprocity fee. The visa may be valid for a period and number of applications for admission consistent with the traveler's needs. (See Reciprocity Schedule under country concerned for the number of applications and validity of visa.) The applicant, however, must pay the machine readable visa (MRV) fee, which is currently \$45.00.

9 FAM 41.2 N6 PAROLE PROCEDURE UNDER

INA 212(D)(5)

(CT:VISA-1124; 11-24-2008)

Consular officers may answer questions about the relationship between the parole procedure and the regular visa procedure under the INA with a reference to INA 212(d)(5) (8 U.S.C. 1182(d)(5)) that contains the statutory authority for the parole procedure. Consular officers shall not give more information in answer to inquiries from the general public, nor shall consular officers suggest parole to an alien or an interested party. In appropriate cases, consular officers may refer inquirers to the Department of Homeland Security (DHS). See 9 FAM Appendix N, 600 for additional guidance on parole issues.

9 FAM 41.2 N7 RESTRICTIONS ON BRITISH VIRGIN ISLANDS NATIONALS ENTERING U.S. VIRGIN ISLANDS UNDER WAIVER

(TL:VISA-187; 03-30-1999)

- a. A national of the British Virgin Islands, and resident therein, requires a passport, but not a visa if proceeding to the U.S. Virgin Islands.
- b. A national of the British Virgin Islands, and resident therein, requires a passport, but does not require a visa to apply for entry into the United States if such applicant:
 - (1) Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;
 - (2) Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);
 - (3) Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and
 - (4) Presents a current Certificate of Good Conduct issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

9 FAM 41.2 N8 K VISA ALIEN NOT ENTITLED TO NONIMMIGRANT VISA WAIVER

(CT:VISA-1046; 09-30-2008)

An alien qualifying for a K visa as the fiancé(e) of a U.S. citizen is not

entitled to a waiver of the NIV requirement regardless of circumstances.

9 FAM 41.2 N9 GUAM VISA WAIVER PROGRAM (GVWP)

9 FAM 41.2 N9.1 Requirements for Participation

(CT:VISA-1046; 09-30-2008)

- a. The Guam Visa Waiver Program, as authorized by the Omnibus Territories Act of 1986 (Public Law 99-396), was implemented on October 1, 1988. The program allows citizens of designated countries to make a temporary visit to Guam provided that they:
 - (1) Visit for business or pleasure for a period of not more than 15 days;
 - (2) Travel aboard a participating airline (see list of participating airlines);
 - (3) Have a round-trip, nonrefundable, and nontransferable ticket;
 - (4) Have a completed and signed Form I-736, Guam Visa Waiver Information;
 - (5) Waive any right otherwise provided in the Act to administrative or judicial review, or appeal of an immigration officer's determination of admissibility; and
 - (6) Do not apply for an extension of stay, adjustment of status, change of nonimmigrant status, or onward travel to another destination in the United States.
- b. For Department of Homeland Security (DHS) regulations regarding the Guam Visa Waiver Program, see 8 CFR 212.1(e).

9 FAM 41.2 N9.2 Countries Eligible to Enter Guam Without Visa

(CT:VISA-1046; 09-30-2008)

See 8 CFR 212.1(e)(3).

9 FAM 41.2 N10 VISA WAIVER PROGRAM (VWP)

(CT:VISA-1046; 09-30-2008)

- a. The Visa Waiver Program (VWP) was established by section 313 of the

Immigration Reform and Control Act of 1986 (Public Law 99-603). It provided for the visa-free entry of nationals of designated countries coming to the United States for tourism or business (B visa purposes) for a period not to exceed 90 days, provided they arrive on a participating carrier and are in possession of a round-trip or onward ticket.

- b. The Immigration Act of 1990 (Public Law 101-649) removed the eight-country cap and extended the pilot program for the original eight countries as well as any other countries designated by the Secretary of State and the Attorney General until September 30, 1994.
- c. The Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416) further extended the program through September 30, 1996, and created a probationary status for participating countries in the Visa Waiver Pilot Program (VWPP).
- d. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208) eliminated the joint action requirement by amending the law to allow the Attorney General to act "in consultation with the Secretary of State" rather than "jointly with the Secretary of State" in designating the countries eligible to participate in the program. The program was further extended until September 30, 1997, and repealed section 217(f) that permitted countries to enter the program in probationary status.
- e. Public Law 105-173 of April 28, 1998, amended the Immigration and Nationality Act to modify and extend the VWPP through April 30, 2000.
- f. On October 30, 2000, the President signed the Visa Waiver Permanent Program Act, making the VWPP permanent. The new legislation (Public Law 106-396), also amended the criteria for admission to, and continuation in, the program. The program is now known as the Visa Waiver Program (VWP). The existence of the program no longer has to be periodically reviewed, nor does it have an expiration date.
- g. Requirements for joining the VWP were modified in the Implementing Recommendations of the 9/11 Commission Act of 2007.

9 FAM 41.2 N10.1 Countries Eligible to Participate in VWP

(CT:VISA-1046; 09-30-2008)

The VWP waives the NIV requirement for admission of certain aliens into the United States for a period not to exceed 90 days. The Attorney General, after consulting with the Secretary of State, is authorized to designate those countries eligible to participate in the VWP.

9 FAM 41.2 N10.2 Eligibility Requirements

9 FAM 41.2 N10.2-1 General

(CT:VISA-1603; 11-15-2010)

An alien who is a national of a participating VWP country does not require a visa, provided the alien:

- (1) Is classifiable as a visitor under INA 101(a)(15)(B) (8 U.S.C. 1101(a)(15)(B));
- (2) Seeks to enter the United States for a period not to exceed 90 days;
- (3) Possesses a valid passport issued by a VWP designated country (see 9 FAM 41.2 *N10.2-2*);
- (4) Completes and signs Form I-94-W, Visa Waiver Nonimmigrant Arrival/Departure Document;
- (5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination of admissibility;
- (6) Waives any right to contest any action for deportation; and
- (7) If arriving by air or sea, arrives on a carrier that has entered into an agreement with DHS to guarantee transport of the alien if found inadmissible or removable. (See 9 FAM 41.2 Exhibit III for a list of signatory carriers.)

9 FAM 41.2 N10.2-2 Biometric Passports (E-passports) Necessary for VWP

(CT:VISA-1124; 11-24-2008)

Passport information below can be found at the U.S. Customs and Border Protection Web site under the "Overview of the Visa Waiver Program."

VISA WAIVER PROGRAM

TRAVELER GUIDE

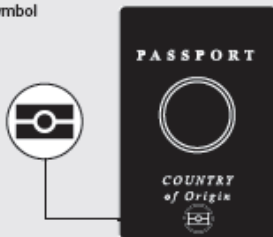
TRAVELERS VISITING THE UNITED STATES

This guide for travelers outlines important changes in passport and e-Passport requirements for travelers from Visa Waiver Program (VWP) countries applying for admission to the United States. Under the VWP, most travelers from the 27 countries participating in the VWP do not need a visa to enter the United States if they are traveling for tourism or business for 90 days or less. Please check with the passport-issuing agency of your country of nationality if you have specific questions. Travelers from countries not in the VWP are required to obtain a visa for entry into the United States.

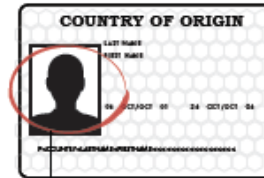
As of **October 26, 2006**, any passport issued *on or after this date* by a VWP country must be an e-Passport for VWP travelers to be eligible to enter the United States without a visa.

An e-Passport has an integrated computer chip that holds the same information printed on the passport's data page: the holder's name, date of birth and other biographic information. These e-Passports must comply with international technical standards established by the International Civil Aviation Organization.

An e-Passport has this international symbol on the cover.



A VWP traveler who has a valid, machine-readable passport with a **digital photograph** does not need a new e-Passport until the existing passport expires, if the digital photograph passport was issued before **October 26, 2006**.



DIGITAL PHOTOGRAPH

A digital photo is printed on the page, not glued or laminated onto the passport.

A VWP traveler with a valid, machine-readable passport **without** a digital photograph does not need a new e-Passport until the existing one expires, if the machine-readable passport was issued before **October 26, 2005**.



MACHINE-READABLE ZONE

A machine-readable passport has two lines of text as letters, numbers and chevrons (<<<) at the bottom of the personal information page, along with your picture.



Traveler Guide created by the U.S. Department of Homeland Security • www.dhs.gov • August 2006

VISA WAIVER PROGRAM
 TRAVELER GUIDE

TRAVELERS VISITING THE UNITED STATES

GUIDELINES FOR FOREIGN TRAVELERS TO THE UNITED STATES

Traveling Under the Visa Waiver Program

The most common way of visiting the United States without a visa is if you are traveling under the Visa Waiver Program (VWP).

Can I travel to the United States under the Visa Waiver Program?

There are 27 countries that participate in the Visa Waiver Program.¹

If your country is on this list, and you are traveling to the United States for tourism or business for 90 days or less with a valid passport that meets U.S. requirements, and the conditions below do not apply to you, you do NOT need a visa. Otherwise, you need to obtain a visa. Please see "Getting a Visa" below.²


¹VWP countries are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom (for citizens with the unrestricted right of permanent abode in England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man)

²You need a visa if you:

- Intend to stay longer than 90 days
- Intend to travel to the United States for a reason other than tourism or business
- Have been arrested, even if not convicted
- Have a criminal record
- Have a serious, communicable disease (including HIV)
- Have been refused entry to the United States on a previous occasion
- Have been deported from the United States
- Have previously overstayed the 90 days permitted under the VWP
- Are a child included on your parent's passport

A. Passports issued on or after October 26, 2006 e-Passports

New passports issued by Visa Waiver Program countries must be e-Passports, which include an integrated computer chip capable of storing biographic information from the data page, as well as other biometric information, such as the required digital photograph of the holder. You can identify an e-Passport with the symbol below.



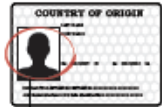
If your passport does not have this feature, you can still travel without a visa if it is a valid passport issued:

- Before October 26, 2005, and includes a machine-readable zone, or
- Between October 26, 2005, and October 25, 2006, and includes a digital photograph.

If you were issued a passport on or after October 26, 2006, and it is not an e-Passport, you will need to obtain a visa. Please see "Getting a Visa" below.

B. Passports issued October 26, 2005 - October 25, 2006 Digital Photographs

Older, but still valid passports issued by Visa Waiver Program countries between October 26, 2005, and October 25, 2006, must include a digital photo printed on the data page, or the traveler will be required to obtain a visa. A digital photo is one that is printed on the page, not a photo that is glued or laminated into the passport.




If your passport does not have this feature, you can still travel without a visa if you:

- Were issued a valid passport before October 26, 2005, with a machine-readable zone, or
- Have an "e-Passport," which includes an integrated computer chip capable of storing biographic information from the data page, as well as biometric information such as the digital photograph of the holder.

If you were issued a passport on or after October 26, 2005, and it does not meet the requirements in either sections A or B, you will need to obtain a visa. Please see "Getting a Visa" below.

C. Passports issued before October 26, 2005 Machine-Readable Zones

Older, but still valid passports issued by Visa Waiver Program countries before October 26, 2005, must have a machine-readable zone. A machine-readable passport has two lines of text as letters, numbers and chevrons (<<<) at the bottom of the personal information page, along with the bearer's picture. It looks like the image below.



If your passport does not have this feature, you have two options:

- Get a qualifying, new passport if your country of nationality is producing one, or
- Get a visa. Please see "Getting a Visa" below.

Please contact your passport-issuing agency or your local embassy if you have questions about your country's production of a qualifying e-Passport.

GETTING A VISA

International visitors who need a visa to travel to the United States must apply for one at an American embassy or consulate. For information on how to get a visa, please go to www.travel.state.gov

A visa does not permit entry to the United States. A visa simply indicates that a U.S. consular officer has reviewed your application and has determined you are eligible to enter the country for a specific purpose. A visa allows you to travel to the United States as far as the port of entry (airport, seaport or land border crossing), where the Customs and Border Protection (CBP) officer has the authority to permit you to enter the United States.

9 FAM 41.2 N10.2-3 Applicants Arriving by Air or by Sea

(CT:VISA-1046; 09-30-2008)

VWP participants must be arriving by air or sea, must be traveling on a signatory carrier, and must have:

- (1) A round-trip, nontransferable transportation ticket valid for a period of not less than one year;
- (2) Airline employee passes indicating return passage;
- (3) Individual vouchers;
- (4) Group vouchers for charter flights only; or
- (5) Military travel orders (which include military dependents) for return to duty stations outside the United States on U.S. military flights.

9 FAM 41.2 N10.2-4 Applicants Arriving at Land Border

Ports of Entry

(CT:VISA-1046; 09-30-2008)

Any alien arriving at a land border port of entry must provide evidence of:

- (1) Financial solvency; and
- (2) A domicile abroad.

9 FAM 41.2 N10.3 Form I-94-W, Visa Waiver Nonimmigrant Arrival/Departure Document, Required

(CT:VISA-1046; 09-30-2008)

Applicants for entry under the VWP must complete Form I-94-W, Visa Waiver Nonimmigrant Arrival/Departure Document, prior to arriving at the port of entry, and must undergo screening at the port of entry by DHS. Form I-94-W makes clear that the waiver traveler surrenders the right to an exclusion hearing.

9 FAM 41.2 N10.4 Round-Trip Ticket

(CT:VISA-1046; 09-30-2008)

For purposes of the VWP, a round-trip ticket means any nontransferable ticket, valid for a period of not less than one year, which takes the traveler out of the United States to an onward destination, including foreign contiguous territory or adjacent island, if he or she is resident there. If the traveler is not resident in contiguous territory or adjacent islands, the ticket must transport him or her to a foreign location outside contiguous territory or adjacent islands.

9 FAM 41.2 N10.5 Port of Embarkation for the United States

(CT:VISA-1046; 09-30-2008)

Participants in the VWP may embark for the United States from anywhere in the world, provided they arrive aboard a participating carrier.

9 FAM 41.2 N10.6 Aliens Transiting the United States

(CT:VISA-1046; 09-30-2008)

- a. A VWP applicant may transit the United States to Canada or Mexico if the

end destination is not in either country, unless the traveler is a resident of Canada or Mexico. The return through the United States must be within the original 90 days granted under the VWP. If it is greater than 90 days, the traveler must be able to show that his intent in returning to the United States is not to circumvent the immigration law.

b. As per 8 CFR 217.2(c)(1):

(c) Restrictions on manner of arrival. (1) Applicants arriving by air and sea. Applicants must arrive on a carrier that is signatory to a Visa Waiver Program Agreement and at the time of arrival must have a round trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the round trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

9 FAM 41.2 N10.7 Side Trips Permitted Within 90-Day Limit

(CT:VISA-1046; 09-30-2008)

Travelers participating in the VWP must make their initial entry into the United States aboard one of the participating carriers. After their initial entry into the United States, under the provisions of VWP, a foreign national may temporarily depart to, and return from, Canada, Mexico, or adjacent islands by car or other carriers as long as the total stay in the United States and the time accrued in contiguous territory and/or adjacent islands does not exceed 90 days. (For further information see Chapter 15.7(i) of DHS Inspectors Field Manual, Readmission After Departure to Contiguous Territory or Adjacent Islands.)

9 FAM 41.2 N10.8 Nationality and Passport Requirements

9 FAM 41.2 N10.8-1 Nationality Is Determinative for VWP Purposes

(CT:VISA-1046; 09-30-2008)

The traveler's nationality, not place of birth, determines entitlement to participate in the VWP. Passports must reflect the nationality of a participating country.

9 FAM 41.2 N10.8-2 VWP and the United Kingdom

(CT:VISA-1046; 09-30-2008)

For the purposes of VWP, "United Kingdom" refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (i.e., England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man). Accordingly, with respect to VWP travel, the term "United Kingdom" does not apply to British citizens abroad or to citizens of British Commonwealth countries.

9 FAM 41.2 N10.8-3 Using Official and Diplomatic Passport to Enter the United States

(CT:VISA-1046; 09-30-2008)

Bearers of official and diplomatic passports can use the VWP, provided they are entering the United States for a B visa purpose. If they are coming for an A or G purpose, including a temporary assignment of less than 90 days, the appropriate visa must be placed in the passport.

9 FAM 41.2 N10.9 Aliens Requiring Waiver of Ineligibility

(CT:VISA-1046; 09-30-2008)

Persons for whom a waiver of ineligibility is required must apply for and receive a visa; they are not eligible to participate in the VWP. Persons covered by the blanket waiver of INA 212(a)(1) (8 U.S.C. 1182(a)(1)) for mentally retarded individuals can participate in the VWP, if otherwise qualified, and accompanied by a responsible adult; the blanket waiver will be noted on Form I-94, Arrival and Departure Record, at the port of entry.

9 FAM 41.2 N10.10 Travelers not to Be Discouraged from Seeking Visas

(CT:VISA-1046; 09-30-2008)

- a. Although use of the VWP is encouraged, travelers availing themselves of the program should be made aware of the risks involved and the surrendering of certain rights. Consequently, they should not be discouraged from seeking normal visa services, although posts may wish to prioritize appointments for applicants who are required to have visas to travel.
- b. When a traveler opts to apply for a visa in lieu of choosing to travel under the VWP, consular officers must apply the same U.S. immigration law standards to the case that they would to any other visa applicant.
- c. It is important to remember that although a traveler may come from a

VWP country, this does not necessarily mean that he/she qualifies for VWP travel.

9 FAM 41.2 N10.11 Maintenance of Status

(CT:VISA-1046; 09-30-2008)

An alien admitted to the United States under the VWP:

- (1) Is admitted as a visitor for business or pleasure for a period not to exceed 90 days;
- (2) May not engage in activities inconsistent with status as a visitor;
- (3) Is not eligible for an extension of temporary stay in the United States;
- (4) Is not eligible for adjustment of status to that of a lawful permanent resident alien (other than as an immediate relative as defined under INA 201(b) or under the provisions of INA 245(i); and
- (5) Is not eligible for change of nonimmigrant status.

9 FAM 41.2 N10.12 Refusals to National of Country under Consideration for VWP

(CT:VISA-1046; 09-30-2008)

Consular officers shall not refuse visas under a refusal category that is not included in the calculation of the visa refusal rate for VWP purposes. In other words, consular officers shall not knowingly refuse visas under INA 221(g) instead of INA 214(b) in order to lower the refusal rate for VWP purposes.

9 FAM 41.2 N10.13 Report for Country under Consideration for VWP

(CT:VISA-1046; 09-30-2008)

- a. On May 1 of each year, for any country that has been nominated by the Secretary of State for inclusion in the VWP, posts must report:
 - (1) The total number of nationals of the country who applied for U.S. visas in that country during the previous calendar year;
 - (2) The total number of applicants issued and refused visas;
 - (3) A breakdown of the refusals by refusal category; and
 - (4) The B1/B2 refusal rate under INA 214(b) refusals.
- b. The chief of mission must certify the accuracy of the information

provided.

9 FAM 41.2 N10.14 Applicant Applying Outside His or Her Country

(CT:VISA-1046; 09-30-2008)

A national of a VWP participating country need not be residing in his or her country in order to make application for the VWP.

9 FAM 41.2 N11 CANADIAN CITIZENS SEEKING ADMISSION AS TREATY TRADERS OR TREATY INVESTORS

(CT:VISA-1046; 09-30-2008)

During the United States-Canada Free Trade Agreement negotiations, it was recognized that the E visa classification is extremely technical and sometimes quite complex. All parties agreed that the visa process was the best way to accord this classification. 22 CFR 41.2(m) removes the visa exemption for Canadian citizens who seek to enter the United States as treaty traders/investors under INA 101(a)(15)(E). Such Canadian citizens must apply for an E visa at a U.S. embassy or consulate. (See 9 FAM 41.51 Regs/Statutes and 9 FAM 41.51 Notes.)

9 FAM 41.2 N12 CANADIAN CITIZENS SEEKING ADMISSION UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

(CT:VISA-1124; 11-24-2008)

Citizens of Canada seeking admission to the United States under provisions of the NAFTA are exempt from the visa requirement, unless seeking classification under INA 101(a)(15)(E). (See also 9 FAM 41.59 Notes.)

9 FAM 41.2 N13 ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA)

(CT:VISA-1046; 09-30-2008)

- a. The "Implementing Recommendations of the 9/11 Commission Act of 2007" (9/11 Act) introduced new security enhancements to the VWP, while creating limited waiver authority for visa refusal rate criteria. One of the security enhancements required by the Act before the waiver

authority can be exercised is a fully-automated, electronic system for screening passengers before they begin travel to the United States under the VWP. The Department of Homeland Security (DHS) has developed the Electronic System for Travel Authorization (ESTA) to determine, prior to an individual boarding a carrier en route to the United States, whether that individual is eligible to travel to the United States under the VWP, and whether such travel poses any law enforcement or security risks. ESTA will collect information that is the same as that collected on the Form I-94-W, Nonimmigrant Alien Arrival/Departure, that VWP passengers currently complete on board the carrier and present to U.S. Customs and Border Protection (CBP) officers upon their arrival at U.S. ports of entry (POE).

- b. ESTA applications will be checked against appropriate law enforcement databases, including the terrorist watchlist, lost and stolen passport database, and visa revocation/refusal database. To the extent possible, ESTA will provide almost immediate determinations of eligibility for travel under the VWP. If an ESTA application is not approved, a message will inform the applicant that she/he is not authorized to travel under the VWP and refer the applicant to the CA Web site for information on how to apply for a visa at a U.S. Embassy/Consulate.
- c. An approved travel authorization via ESTA only authorizes a traveler to board a carrier for travel to the United States under the VWP. In the same way that a valid visa does not constitute a determination of admissibility, an approved travel authorization obtained via ESTA is not a guarantee of admissibility to the United States at a port of entry (POE). U.S. Customs and Border Protection (CBP) officers must make admissibility determinations at U.S. ports of entry or pre-clearance facilities.

9 FAM 41.2 N13.1 Electronic System for Travel Authorization (ESTA) Denials

(CT:VISA-1124; 11-24-2008)

- a. An ESTA denial alone is not grounds to deny a visa. An ESTA denial is a lookout that indicates a potential inadmissibility. CBP will deny a travel authorization via ESTA for two main categories of reasons:
 - (1) Because the traveler indicated a potential inadmissibility on his/her ESTA application; or
 - (2) Because there is a Treasury Enforcement Communication System (TECS) lookout corresponding to one of the screening criteria for ESTA. When a traveler is denied a travel authorization via ESTA, that denial will be entered into TECS and then replicated into the Consular Lookout and Support System (CLASS).

- b. The denial will have lookout code "ESTD." The CLASS long comment will state the reason for the denial, as well as the answers the applicant provided to the questions on the ESTA application that are not already part of the biographic data in the record, such as U.S. point of contact, flight/ship information, and email address. The denial reasons will be "TECS LASP," "TECS VRVK," "INTERPOL LASP," "BAD I94 ANSWER," or "MANUAL DENIAL" (which refers to denials based on a "TECS TSDB" or "TECS NO-FLY" lookout). There could be one reason or multiple reasons for denial contained in each hit.

9 FAM 41.2 N13.1-1 ESTA Denials due to I-94W Answers

(CT:VISA-1124; 11-24-2008)

An ESTA denial that says "BAD I94W ANSWER" indicates that the applicant answered "yes" to one of the questions on the Form I-94-W about potential inadmissibilities. The CLASS long comment will indicate to which question the applicant answered "yes." Post should process these cases in the same way they would process an applicant who answered "yes" to a 212a ineligibility question on the Form DS-160, Electronic Nonimmigrant Visa Application, or Form DS-156, Nonimmigrant Visa Application. In fact, the first step should be to see whether the applicant answered "yes" to the same question on the Form DS-160 or Form DS-156.

9 FAM 41.2 N13.1-2 ESTA Denials due to TECS Lookouts

(CT:VISA-1046; 09-30-2008)

- a. All other ESTA denials will be based on a TECS lookout. The lookout in TECS that triggered the ESTA denial should have also been passed to CLASS as a matter of standard procedure through the automated TECS/CLASS interface. As a result, consular officers should see two hits in CLASS – the ESTA denial with the REC code and a separate CLASS hit that corresponds to the reason for the ESTA denial. The separate CLASS hits would have codes related to the TECS record that resulted in the ESTA denial; e.g. "00," "VRVK," "SL." Some TECS records (such as Interpol records) used in the ESTA check may not necessarily be in CLASS. However, if posts are seeing significant numbers of ESTA denial lookouts in CLASS that do not have a corresponding CLASS lookout derived from the TECS record that triggered the ESTA denial, please contact the Public Liaison Division (CA/VO/F/P) and the Consular Affairs Overseas Support Desk.
- b. LASP (Lost and Stolen Passport) HITS: For "TECS LASP" denials, post should verify that there is an "SL" and/or "SLX" lookout in CLASS with the same passport number and then process the case according to current procedures for SL/SLX hits. Posts may also see an "A89" or "T89" CLASS

lookout, which are DHS codes for lost or stolen travel documents. "INTERPOL LASP" denials indicate a match to the Interpol Stolen and Lost Travel Document Database (SLTD). As CLASS does not receive all Interpol LASP data, post may not be able to see the original TECS lookout and should process this case as if there were a CLASS SL/SLX lookout.

- c. VRVK (Visa Revoked) HITS: For "TECS VRVK" denials, post should verify that there is a corresponding VRVK hit in CLASS and then process the case according to current procedures for VRVK cases. In most cases, there will be a CLASS hit that indicates a 212a inadmissibility. (See 9 FAM 41.122, PN12.3.)
- d. TECS TSDB (Terrorist Screening Data Base) OR TECS NO-FLY HITS: Any potential matches with TSDB or No-Fly lookouts will go to the National Targeting Center (NTC) for evaluation. If NTC decides an ESTA should be denied, the hit will be annotated "MANUAL DENIAL." The comments will indicate whether it was a TSDB or No-Fly lookout, as well as provide the TIDE ID of the TECS lookout(s) that caused the denial. Posts should verify that there is a 00 hit that has the same TIDE ID(s), and then follow current security advisory opinion (SAO) procedures for 00 cases. (See 9 FAM Appendix G, 500.) If it is not clear which 00 hit caused the denial, or if post sees no corresponding 00 hit, please indicate that in the SAO transmission.

9 FAM 41.2 N13.2 Visa Annotation for ESTA Denials

(CT:VISA-1046; 09-30-2008)

To facilitate processing at the port of entry (POE), please annotate any visa issued over an ESTA denial "ESTA RECORD REVIEWED." This will let inspectors know that the consular officer has seen the ESTA denial and addressed the underlying reason for that denial. It will limit the possibility that these travelers will be required to go to secondary inspection while their ESTA denial is reviewed at the POE.

9 FAM 41.2 N13.3 Additional Information

(CT:VISA-1124; 11-24-2008)

See U.S. Customs and Border Protection Web site for additional details and guidance on the ESTA program.